

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOUGLAS D. SMITH,

Defendant.

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Case No. CR 1:18-03495-001 JCH

DEFENDANT'S UNOPPOSED MOTION TO CONTINUE TRIAL

Douglas D. Smith, Defendant, by and through undersigned counsel Aric G. Elsenheimer and Amanda R. Lavin, moves the Court to continue the jury trial currently scheduled for June 15, 2020 and to vacate and reschedule all other deadlines and settings in this matter. Mr. Smith requests that the Court reschedule the jury trial on the Court's September, 2020 trial docket. Additionally, Mr. Smith requests that the Court extend the deadlines for the filing of pretrial motions, and responses and replies, until July 15, 2020. In support of this motion, Mr. Smith states:

1. Mr. Smith pleaded not guilty to an indictment on November 6, 2018. Mr. Smith is charged by indictment with Second Degree Murder.
2. Trial in this matter is currently scheduled for June 15, 2020.
3. Mr. Smith respectfully requests a continuance to complete several tasks that are vital to his defense. Specifically, Mr. Smith and the government are engaged in plea negotiations and additional time may facilitate a resolution of this case. Additionally, the parties have filed a number of motions and require additional time to prepare and file responses and replies and to

have those motions heard by the Court. Lastly, the Covid-19 pandemic has made it difficult to speak with potential witnesses, serve subpoenas, and otherwise conduct preparation for trial.

4. A continuance until September 2020 is necessary for counsel to complete the following tasks:

- A) To prepare and file pretrial motions and responses and replies to pretrial motions and motions in limine.
- B) To further pursue a possible resolution of this matter.
- C) To prepare for trial, which has been delayed due to the Covid-19 pandemic and the statewide stay-at-home order.

5. Mr. Smith requests a continuance of the trial until the Court's September 2020 trial calendar. Counsel believes that length of time to be the minimum that will be sufficient to pursue a possible resolution of this case, complete pretrial motions briefing and have those motions heard and resolved by the Court, and to permit trial preparation to ensure that Mr. Smith receives effective assistance of counsel and is accorded due process. Trial preparation has been impeded by the Covid-19 pandemic.

6. Mr. Smith's right to the effective assistance of counsel includes adequate time to prepare for trial. Without that adequate time to prepare for trial, Mr. Smith will be denied his right to the effective assistance of counsel. As the Eleventh Circuit has recognized,

Implicit in this right to counsel is the notion of adequate time for counsel to prepare the defense: "Disposition of a request for continuance . . . is made in the discretion of the trial judge, the exercise of which will ordinarily not be reviewed. But the denial of opportunity for appointed counsel to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment."

United States v. Verderame, 51 F.3d 249, 252 (11th Cir. 1995) (quoting *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322 (1940)).

7. Mr. Smith agrees with this continuance and will not be prejudiced by this continuance. Additional time will not prejudice Mr. Smith and will potentially allow him to reach a favorable resolution with the government. Counsel has discussed with Mr. Smith his rights under the Speedy Trial Act and Mr. Smith understands the need for a continuance and respectfully requests that the court continue his trial.

8. Undersigned counsel affirmatively states that ***under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)***, the ends of justice will be served by granting this extension of time in which to file motions and a continuance of the trial. *See United States v. Hernandez-Mejia*, 406 Fed. App'x. 330, 338 (10th Cir. 2011) (“The Speedy Trial Act was intended not only to protect the interests of defendants, but was also ‘designed with the public interest firmly in mind.’”) (quoting *United States v. Toombs*, 574 F.3d 1262, 1273 (10th Cir. 2009)). Additional time will allow the parties to potentially reach a resolution of this matter. Additionally, a continuance of the deadlines and jury trial will allow Mr. Smith to adequately prepare for trial, interview witnesses, and conduct additional investigation, all of which has been severely impaired by the ongoing Covid-19 pandemic. Lastly, a continuance of the trial will allow the parties additional time to prepare and file motions, responses, and replies to motions. This motion is not predicated upon the congestion of the Court’s docket.

9. Counsel for the government, Kyle Nayback, does not oppose this motion.

WHEREFORE, Mr. Smith, by and through undersigned counsel, respectfully requests that this Court continue the jury trial to the Court’s September 2020 docket, and extend the deadline for the filing of motions, responses, and replies until July 15, 2020.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER

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Electronically filed May 13, 2020

/s/ Aric G. Elsenheimer

Assistant Federal Public Defender